IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

APPEAL FROM ORDER NO.812 OF 2004
IN
NOTICE OF MOTION NO.1011 OF 2004
IN
S.C.SUIT NO.1166 OF 2004

M/s.Bafna Builders).. Appellant

Versus

Smt.Ratnabai widow of Ramdev Shenoy).. Respondent

Mr.A.C.Singh with Mr.M.L.Chaturvedi for the Appellant.

Mr.P.S.Gidwani for the Respondent.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 8TH DECEMBER 2004

P.C.:

. According to the Appellant, the impugned order of the trial Court cannot be sustained since no injunction could have been passed against it. The Appellant claims to have purchased the suit property from the lessor who had entered into a lease deed with the Respondent in September 1966. According to the Appellant, the lease has expired by efflux of time since it was to be in operation only for thirty five years. The lease has, therefore, expired in September 2001. A submission is made on behalf of the Appellant that, at the highest, under the lease deed, the Respondent lessee

would be entitled to the value of the structures on the lands, the market value of which would be decided by the Architect to be appointed. The Appellant submits that it is only this amount which the lessee i.e. the Respondent herein would be entitled to and, therefore, no injunction could be granted against it.

2. The Appellant may make an appropriate application before the trial Court to appoint an Architect in order to determine the market value of the structure in accordance with paragraph 9 of the lease deed entered into between Shantilal Chhotalal Shah, the predecessor-in-title of the Appellant with the Respondent herein. The Architect so appointed shall fix the value of the structure and the Appellant may then take out appropriate proceedings before the trial Court for modification and/or vacation of the impugned order.

3. Appeal From Order disposed of accordingly.

4. Since the Appeal From Order has been disposed of, nothing survives in Civil Application No.1242 of 2004 and the same is disposed of accordingly.